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## Central Valley Regional Water Quality Control Board

19 July 2019

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### ***OFFER TO SETTLE ADMINISTRATIVE CIVIL LIABILITY, DLC ROCKLIN, GRANITE BLUFF, PLACER COUNTY, WDID 5S31C383430***

This letter contains an offer from the Central Valley Regional Water Quality Control Board (Central Valley Water Board) Prosecution Team to settle claims for administrative civil liability arising out of alleged violations by DLC Rocklin (Discharger) of the General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order 2009-0009 DWQ (General Permit) at the Granite Bluff construction project located on Aguilar Road in Rocklin (Project). As the owner of the Project and the legally responsible person enrolled in the General Permit, the Discharger is responsible for complying with all elements of the General Permit and is strictly liable for penalties associated with non-compliance. Hereafter, this letter will be referred to as the "Settlement Offer." This Settlement Offer was prepared following a meeting with the Discharger on 5 June 2019 to discuss the violations and clarify the factors used to prepare the Settlement Offer.

**This Settlement Offer provides the Discharger with an opportunity to resolve the alleged violations through payment of one hundred fifty-three thousand four hundred sixty dollars (\$153,460). Please read this letter carefully and respond no later than 16 August 2019.**

#### Description of Violations

During inspections on 27 November 2018 and 18 January 2019, Board staff observed that erosion control Best Management Practices (BMPs) were not deployed on disturbed soils in road cuts at the Project during rain events as required by the General Permit.

During the 18 January 2019 inspection, Board staff observed Project crew pumping turbid storm water retained in the Project's storm drain system into a watercourse tributary to Secret Ravine. The crew was using filter bags and gravel bag check dams to reduce turbidity in the discharge. These BMPs, and the absence of erosion controls on the road cuts, were ineffective at controlling turbidity and did not comply with General

Permit Effluent Standards. The Effluent Standards require that dischargers minimize or prevent pollutants in storm water discharges through the use of controls, structures, and management practices that achieve best conventional pollutant control technology (BCT) for conventional pollutants such as sediment and turbidity.

On 18 January 2019, Board staff measured turbidity in the discharge at 2,000 Nephelometric Turbidity Units (NTU), well in excess of the General Permit's Numeric Action Level (NAL) of 250 NTU. In addition, the Discharger did not collect samples of the discharge as required by the General Permit. Turbidity measurements by Board staff showed the discharge from the Project caused turbidity in the receiving water to increase from 20.5 NTU to 150 NTU. This increase exceeded the maximum increase allowed by the Water Quality Control Plan for the Central Valley Region, Sacramento River Basin and San Joaquin River Basin, Fifth Edition (Basin Plan) in violation of the General Permit Receiving Water Limitations.

Attachment A contains the Board staff's emails and photo logs for inspections on 8 and 27 November 2018 and the 1 February 2019 Notice of Violation with the 18 January 2019 Inspection Report which describe the violations. Note that the email from Board staff to the Discharger regarding the late November inspection erroneously references both 26 November and 27 November as the inspection date. The inspection occurred on 27 November 2018.

This Settlement Offer alleges the Discharger violated the following four sections of the General Permit: (1) General Permit Attachment D, Effluent Standard A.1.b. by discharging turbid runoff from the Project without using BMPs that achieved the Best Available Technology Economically Achievable/Best Conventional Pollutant Control Technology (BAT/BCT) standard; (2) General Permit Attachment D, Section E.3 by failing to install appropriate erosion control BMPs on active areas during rain events; (3) General Permit Attachment D, Section I.4. by failing to collect grab samples of the storm water pumped from the Project; and, (4) General Permit Section VI. Receiving Water Limitations by causing or contributing to an exceedance of the water quality objective for turbidity in the Basin Plan.

#### Statutory Liability

Pursuant to Section 13385 of the California Water Code, the Discharger is liable for administrative civil liabilities of up to \$10,000 per violation for each day in which the violation occurs and \$10 per gallon discharged in excess of the first 1,000 gallons. The statutory minimum civil liability is the economic benefit resulting from the violations. The State Water Resources Control Board's Water Quality Enforcement Policy (Enforcement Policy) states that the minimum penalty is to be the economic benefit plus 10%. For the violations described in the attachments, the maximum potential liability for the violations is over \$348,000 and the minimum liability is \$13,134.

#### Proposed Settlement Offer

The Central Valley Water Board's Prosecution Team proposes to resolve the violation(s) with this Settlement Offer of \$153,460. This Settlement Offer was determined based on an assessment of the factors set forth in Water Code section 13385(e) using the penalty methodology set forth in the Enforcement Policy. The enclosed "Penalty Calculation Methodology" describes in detail how the penalty amount was calculated. The Prosecution Team believes that the proposed resolution of the

alleged violation(s) is fair and reasonable, fulfills the Central Valley Water Board's enforcement objectives, and is in the best interest of the public.

Should the Discharger choose not to accept this Settlement Offer, please be advised that the Central Valley Water Board Prosecution Team reserves the right to seek a higher liability amount, up to the maximum allowed by statute, either through issuance of a formal administrative civil liability complaint or by referring the matter to the Attorney General's Office. The Central Valley Water Board Prosecution Team also reserves the right to conduct additional investigation, including issuance of investigation orders and/or subpoenas to determine the number of gallons discharged and whether additional violations occurred. Any additional violations and gallons of discharge subjecting the Discharger to liability may be included in a formal enforcement action. The Discharger can avoid the risks inherent in a formal enforcement action and settle the alleged violation(s) by accepting this Settlement Offer. Please note that the Settlement Offer does not address liability for any violation that is not specifically identified in the attached inspection reports.

#### Responding to the Settlement Offer

If the Discharger chooses to accept this Settlement Offer, then the enclosed Acceptance of Settlement Offer and Waiver of Right to Hearing (Acceptance and Waiver) shall be completed and submitted no later than 16 August 2019 to the following address:

Central Valley Regional Water Quality Control Board  
Attention: Kim Sellards, Supervisor, Enforcement Section  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670

**Important!** - Upon receipt of the Acceptance and Waiver, this settlement will be publicly noticed for a 30-day comment period as required by federal regulations. If no substantive comments are received within the 30 days, the Prosecution Team will ask the Central Valley Water Board's Executive Officer to formally endorse the Acceptance and Waiver as an order of the Central Valley Water Board. An invoice will then be mailed to the Discharger requiring payment of the administrative civil liability within 30 days of the date of the invoice.

If, however, substantive comments are received in opposition to this settlement and/or the Executive Officer declines to accept the settlement, then the Settlement Offer may be withdrawn. In this case, the Discharger will be notified and the Discharger's waiver pursuant to the Acceptance and Waiver will also be treated as withdrawn. The unresolved violation(s) will be addressed in a formal enforcement action. An administrative civil liability complaint may be issued, and the matter may be set for a hearing.

If you have any questions about this settlement offer, please contact Kim Sellards at (916) 464-4835 or at [kim.sellards@waterboards.ca.gov](mailto:kim.sellards@waterboards.ca.gov).

**ANDREW ALTEVOGT**  
Assistant Executive Officer

**Enclosures: Acceptance of Settlement Offer and Waiver of Right to a Hearing  
Penalty Calculation Methodology**

**Attachment A:**

- Staff emails and photo logs for 8 and 27 November 2018 inspections
- 1 February 2019 Notice of Violation with
- 18 January 2019 Inspection Report

cc: Greg Gholson, U.S. EPA, Region IX, San Francisco  
Nickolaus Knight, Office of Enforcement, State Water Board, Sacramento  
Bayley Toft-Dupuy, Office of Chief Counsel, State Water Board, Sacramento  
Patrick Pulupa, Executive Officer, Central Valley Water Board, Rancho Cordova

**ORDER NO. R5-[                      ]<sup>1</sup>**  
**ACCEPTANCE OF SETTLEMENT OFFER AND WAIVER OF RIGHT TO A**  
**HEARING**  
**FOR**  
**DLC ROCKLIN**  
**GRANITE BLUFF**  
**PLACER COUNTY**

By signing below and returning this *Acceptance of Settlement Offer and Waiver of Right to Hearing (Acceptance and Waiver)* to the Central Valley Water Board, DLC Rocklin (Discharger) hereby accepts the Settlement Offer described in the letter dated 19 July 2019 and titled *Offer to Settle Administrative Civil Liability, DLC Rocklin, Granite Bluff, Placer County, WDID 5S31C383430* and waives the right to a hearing before the Central Valley Water Board to dispute the alleged violations described in the Settlement Offer and its enclosures.

The Discharger agrees that the Settlement Offer shall serve as a complaint pursuant to Article 2.5 of the Water Code and that no separate complaint is required for the Central Valley Water Board to assert jurisdiction over the alleged violations. The Discharger agrees to perform the following:

- Pay an administrative civil liability in the sum of **one hundred fifty-three thousand four hundred sixty dollars (\$153,460)** by cashier's check or certified check made payable to the "State Water Resources Control Board Cleanup and Abatement Account". This payment shall be deemed payment in full of any civil liability pursuant to Water Code section 13385 that might otherwise be assessed for violations described in the Settlement Offer and its enclosures.
- Fully comply with the conditions of the General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order 2009-0009 DWQ (General Permit) at the Granite Bluff construction project .

The Discharger understands that by signing this *Acceptance and Waiver*, the Discharger has waived its right to contest the allegations in the Settlement Offer and the civil liability amount for the alleged violation(s). The Discharger understands that this *Acceptance and Waiver* does not address or resolve any liability for any violation not specifically identified in the Settlement Offer and its enclosures.

Upon execution by the Discharger, the *Acceptance and Waiver* shall be returned to the following address:

Central Valley Regional Water Quality Control Board  
Attention: Kim Sellards, Supervisor, Enforcement Section  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670

The Discharger understands that federal regulations require the Prosecution Team to publish notice of and provide at least 30 days for public comment on any proposed

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<sup>1</sup> Order number to be added after endorsement

Board Executive Officer (acting as head of the Advisory Team), will be published as required by law for public comment

If no comments are received within the notice period that cause the Prosecution Team to reconsider the Settlement Offer, then the Prosecution Team will present this *Acceptance and Waiver* to the Central Valley Water Board's Executive Officer for formal endorsement on behalf of the Central Valley Water Board.

The Discharger understands that if significant comments are received in opposition to the settlement, then the offer may be withdrawn by the Prosecution Team. If the Settlement Offer is withdrawn, then the Discharger will be notified and the Discharger's waiver pursuant to the *Acceptance and Waiver* will also be treated as withdrawn. The unresolved violation(s) will be addressed in a formal enforcement action. An administrative civil liability complaint may be issued and the matter may be set for a hearing.

The Discharger understands that once this *Acceptance and Waiver* is formally endorsed and an Order Number is inserted, then the full payment is a condition of this *Acceptance and Waiver*. An invoice will be sent upon endorsement, and full payment will be due within 30 days of the date of the invoice.

I hereby affirm that I am duly authorized to act on behalf of and to bind the Discharger in the making and giving of this *Acceptance and Waiver*.

DLC ROCKLIN

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

IT IS SO ORDERED, pursuant to California Water Code section 13385.

By: \_\_\_\_\_  
PATRICK PULUPA, Executive Officer

Date: \_\_\_\_\_

**PENALTY CALCULATION METHODOLOGY  
FOR  
DLC ROCKLIN  
GRANITE BLUFF  
PLACER COUNTY**

The State Water Resources Control Board's *Water Quality Enforcement Policy* (Enforcement Policy) establishes a methodology for determining administrative civil liability by addressing the factors that are required to be considered under California Water Code section 13385(e). Each factor of the nine-step approach is discussed below, as is the basis for assessing the corresponding score. The Enforcement Policy can be found at: [Enforcement Policy](#).

**Violation 1 – Failure to Implement BAT/BCT BMPs**

Dischargers are required to minimize or prevent pollutants in storm water using controls, structures and management practices that achieve best available technology economically achievable (BAT) for toxic pollutants and non-conventional pollutants and best conventional pollutant control technology (BCT) for conventional pollutants, also referred as the BAT/BCT standard. Site inspections on 8 November 2018, 27 November 2018, and 18 January 2019, and the Numeric Action Limit (NAL) Exceedance Report prepared for the discharges on 29 November 2018, documented that the Project failed to meet BAT/BCT requirements. The Discharger did not implement appropriate erosion and sediment controls to minimize or prevent pollutants in storm water. Discharge of storm water from a construction site without implementation of Best Management Practices (BMPs) that meet the BAT/BCT standard is a violation of the Construction General Permit. The Effluent Standards in Attachment D, section A.1.b of the Construction General Permit state: *Dischargers shall minimize or prevent pollutants in storm water discharges and authorized non-storm water discharges through the use of controls, structures, and management practices that achieve BAT for toxic and non-conventional pollutants and BCT for conventional pollutants.*

**Table 1**

<b>PENALTY FACTOR</b>	<b>VALUE</b>	<b>DISCUSSION</b>
Physical, chemical, biological, or thermal characteristics of the discharge	2	Discharges of sediment can cloud the receiving water (which reduces the amount of sunlight reaching aquatic plants), clog fish gills, smother aquatic habitat and spawning areas, and impede navigation. Sediment can also transport other materials such as nutrients, metals, and oils and grease, which can also negatively impact aquatic life and aquatic habitat.
Harm or potential for harm to beneficial uses	3	The Project is located within a High-Risk receiving-water watershed with Cold, Spawn and Migratory beneficial uses. The turbidity measured of the discharge exceeded the Construction General Permit's Numeric Action Limits.
Susceptibility to cleanup or abatement	1	The turbidity discharged was dispersed by storm water over a long distance and cleanup or abatement of 50% or more of the material would not be possible.

Per gallon and per day factor for discharge violations	0.15	The "Deviation from Requirement" is moderate because the Discharger did not implement several requirements of the General Permit rendering the permit's BAT/BCT effluent standard ineffective. The value of 0.15 was determined from Table 1 of the Enforcement Policy.
Volume discharged	17,800	The volume discharged corresponds to dewatering discharges. It was calculated using the estimated least amount of run-time of the dewatering pump (6 hours) at a rate of 3,300 gallons per hour minus 2,000 gallons (1,000 gallons per discharge event) as required by the Enforcement Policy. The rate of the discharge was obtained from the Notice of Violation (NOV) response prepared on 3 March 2019 by the Project's Qualified SWPPP Practitioner.
Adjustment for high volume discharges	n/a	Discharge volume does not meet the minimum 100,000 gallons discharge for high volume consideration.
Days of discharge	3	Although there were likely additional days of discharge, the Prosecution Team is only considering the two (2) days of dewatering activities and the one (1) additional day with a documented NAL exceedance. The Prosecution Team reserves the right to propose additional days of violation should this matter proceed to hearing.
<b>Initial Liability for Violation #1</b>	\$31,200	The liability is calculated as per day factor (0.15) multiplied by the number of days (3 days) multiplied by the maximum liability per day (\$10,000/day) plus the number of gallons discharged in excess of 1,000 gallons per discharge event (17,800 gallons) multiplied by \$10 dollars per gallon.
<b>Adjustments for Discharger Conduct</b>		
Culpability	1.4	The Discharger has applied for and received permit coverage under the Construction General Permit for numerous construction sites in California. The Discharger also retained a QSD and QSP that are aware of the General Permit's BMP requirements. Therefore, the Discharger should be aware of, and complied with, the General Permit's requirements. In addition, the Discharger intentionally pumped turbid water offsite.
History of Violations	1	Board staff is not aware of previous violations by the Discharger related to the General Permit. Therefore, a neutral factor of 1.0 is appropriate.
Cleanup and Cooperation	1	The Discharger stopped dewatering activities when requested by Regional Water Quality Control Board staff and adjusted BMPs following each discharge event. An Active Treatment System (ATS) was operational on 4 March 2019. Therefore, a neutral factor of 1.0 is appropriate.



<b>Total Base Liability for Violation #1</b>	\$43,680	The base liability is calculated as the initial liability multiplied by each of the above three factors.
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Violation 2 – Failure to implement erosion control BMPs on active areas

Risk level 2 projects are required to implement appropriate erosion and sediment control BMPs for areas under active construction. The Sediment Control requirements of the Construction General Permit Attachment D Section E.3 Additional Risk Level 2 Requirement, states: *Risk Level 2 dischargers shall implement appropriate erosion control BMPs (runoff control and soil stabilization) in conjunction with sediment control BMPs for areas under active construction.* The Discharger failed to protect the Project's road cut areas with appropriate erosion and sediment control BMPs during storm events. The Prosecution Team alleges the Discharger violated this requirement on days when storm events generated at least 0.5 inches of precipitation, beginning from the inspection date 27 November 2018 and ending on 3 March 2019, a day prior to the operational date of an Active Treatment System. Rain gage data obtained by Central Valley Regional Water Quality Control Board staff indicated that within the considered date range, twelve (12) days generated 0.5 inches of rain or more.

**Table 2**

<b>PENALTY FACTOR</b>	<b>VALUE</b>	<b>DISCUSSION</b>
Discharge violations	n/a	This step is not applicable because the violation is not a discharge violation.
Potential for harm	Moderate	Discharges of sediment can cloud the receiving water (which reduces the amount of sunlight reaching aquatic plants), clog fish gills, smother aquatic habitat and spawning areas, and impede navigation. Sediment can also transport other materials such as nutrients, metals, and oils and grease, which can also negatively impact aquatic life and aquatic habitat.
Deviation from requirement	Major	The "Deviation from Requirement" is major because the no effort was made to comply with the requirement, as all active areas remained without appropriate erosion control during storm events.
Per day factor	0.55	Major deviation and moderate potential for harm determined from Table 3 in the Enforcement Policy. The middle value was chosen, but the value could be increased if this matter proceeds to hearing.
Days of violation	12	Only storm event days with at least 0.5-inches of precipitation were considered, but additional days could be considered if this matter proceeds to hearing.

PENALTY FACTOR	VALUE	DISCUSSION
<b>Initial Liability for Violation #2</b>	\$66,000	The liability is calculated as per day factor (0.55) multiplied by the number of days (12 days) multiplied by the maximum liability per day (\$10,000/day).
Adjustments for Discharger Conduct		
Culpability	1.3	The Discharger has applied for and received permit coverage under the Construction General Permit for numerous construction sites in California. The Discharger also retained a QSD and QSP that are aware of the Construction General Permit's BMP requirements. Therefore, the Discharger should be aware of the General Permit's requirements and should have complied with the Construction General Permit's requirements.
History of Violations	1	Board staff is not aware of previous violations by the Discharger related to the General Permit. Therefore, a neutral factor of 1.0 is appropriate.
Cleanup and Cooperation	1.1	Efforts to bring the Project back into compliance were slow. An Active Treatment System (ATS) was not operational until 4 March 2019, and an ATS Plan has not been submitted.
<b>Total Base Liability for Violation #2</b>	\$94,380	The base liability is calculated as the initial liability multiplied by each of the above three factors.

#### Violation 3 – Failure to sample while pumping

The Prosecution Team alleges that the Discharger violated the Sampling and Analysis requirements for Risk Level 2 Projects when the Discharger failed to collect and analyze samples during dewatering activities. According to Attachment D, Section I.4. Risk Level 2 – Water Quality Sampling and Analysis, discharges from contained or stored storm water must at a minimum be sampled three times per day, and the samples must be collected from discharge points. In the response to the NOV, the Discharger indicated that samples were not collected on one of the two days in which discharges caused by dewatering took place; 18 January 2019.

**Table 3**

<b>PENALTY FACTOR</b>	<b>VALUE</b>	<b>DISCUSSION</b>
Discharge violations	n/a	This step is not applicable because the violation is not a discharge violation.
Potential for harm	Moderate	The turbidity measured in the samples collected by Central Valley Regional Water Quality Control Board staff exceeded the Numeric Action Limits of the Construction General Permit and raised the turbidity of the receiving water. Discharges of sediment can cloud the receiving water (which reduces the amount of sunlight reaching aquatic plants), clog fish gills, smother aquatic habitat and spawning areas, and impede navigation. Sediment can also transport other materials such as nutrients, metals, and oils and grease, which can also negatively impact aquatic life and aquatic habitat.
Deviation from requirement	Major	The "Deviation from Requirement" is major because the minimum sampling requirements of the Construction General Permit were not met on two days of dewatering operations.
Per day factor	0.55	Major deviation and moderate potential for harm determined from Table 3 in the Enforcement Policy. The middle value was chosen, but the value could be increased if this matter proceeds to hearing.
Days of violation	1	Discharger failed to collect samples on one day of dewatering activities (18 January 2019).
<b>Initial Liability for Violation #3</b>	\$5,500	The liability is calculated as per day factor (0.55) multiplied by the number of days (1 days) multiplied by the maximum liability per day (\$10,000/day).
<b>Adjustments for Discharger Conduct</b>		
Culpability	1.4	The Discharger has applied for and received permit coverage under the Construction General Permit for numerous construction sites in California. The Discharger also retained a QSD and QSP that are aware of the Construction General Permit's BMP requirements. In addition, the discharge being pumped was visually turbid and the Discharger should be aware that samples are required to be collected. Therefore, the Discharger should be aware of the General Permit's requirements and should have complied with the Construction General Permit's requirements.
History of Violations	1	Board staff is not aware of previous violations by the Discharger related to the General Permit. Therefore, a neutral factor of 1.0 is appropriate.
Cleanup and Cooperation	1	This violation was a single occurrence and actions were implemented to avoid recurrence of this violation.

PENALTY FACTOR	VALUE	DISCUSSION
<b>Total Base Liability for Violation #3</b>	\$7,700	The base liability is calculated as the initial liability multiplied by each of the above three factors.

Violation 4 – Failure to comply with Receiving Water Limitations

The Construction General Permit requires that stormwater discharges do not contribute to an exceedance of a Water Quality Objective or Water Quality Standard of the Regional Water Board's Water Quality Control Plan (Basin Plan). The Basin Plan for the Sacramento River identifies turbidity as a Water Quality Objective for inland surface waters, and it establishes an allowable increase in the surface water's turbidity based on background readings. The background turbidity of the surface water on 18 January 2019 was 20.5 NTU. The receiving water's turbidity downstream from the Project's discharge point was 150 NTU. The maximum increase in turbidity allowed by the Basin Plan based on the receiving water's turbidity is 20%. The percentage increase in turbidity due to dewatering activities from the Project was 730%. Based on the increase in turbidity, the Prosecution Team alleges that the Discharger violated Section VI. Receiving Water Limitations requirement of the Construction General Permit, which states: *The discharger shall ensure that storm water discharges and authorized non-storm water discharges will not contain pollutants that cause or contribute to an exceedance of any applicable water quality objectives or water quality standards (collectively, WQS) contained in a Statewide Water Quality Control Plan, the California Toxics Rule, the National Toxics Rule, or the applicable Regional Water Board's Water Quality Control Plan (Basin Plan).*

**Table 4**

PENALTY FACTOR	VALUE	DISCUSSION
Discharge violations	n/a	Not a discharge violation.
Potential for harm	Moderate	Discharges of sediment can cloud the receiving water (which reduces the amount of sunlight reaching aquatic plants), clog fish gills, smother aquatic habitat and spawning areas, and impede navigation. Sediment can also transport other materials such as nutrients, metals, and oils and grease, which can also negatively impact aquatic life and aquatic habitat.
Deviation from requirement	Major	The "Deviation from Requirement" is major because the turbidity measured in the samples collected upstream and downstream from the Project's discharge point show that the turbidity in the receiving water increased 730% under fully mixed conditions, and 20 minutes after dewatering activities had stopped. The maximum increase in turbidity allowed by the basin plan is 20% from background. In addition, dewatering operations would have continued had these not been discovered by Central Valley Regional Water Quality Control Board staff.

PENALTY FACTOR	VALUE	DISCUSSION
Per day factor	0.55	Major deviation and moderate potential for harm determined from Table 3 in the Enforcement Policy. The middle value was chosen, but the value could be increased if this matter proceeds to hearing.
Days of violation	1	The violation is only being charged for the day in which dewatering operations were discovered by Central Valley Regional Water Quality Control Board staff.
<b>Initial Liability for Violation #4</b>	\$5,500	The liability is calculated as per day factor (0.55) multiplied by the number of days (1 day) multiplied by the maximum liability per day (\$10,000/day).
<b>Adjustments for Discharger Conduct</b>		
Culpability	1.4	The Discharger has applied for and received permit coverage under the Construction General Permit for numerous construction sites in California. The Discharger also retained a QSD and QSP that are aware of the Construction General Permit's BMP requirements. In addition, the turbidity plume in the creek created by the pumped discharge was easily observed from the discharge point. Therefore, the Discharger should be aware of the General Permit's requirements and should have complied with the Construction General Permit's requirements.
History of Violations	1	Board staff is not aware of previous violations by the Discharger related to the General Permit. Therefore, a neutral factor of 1.0 is appropriate.
Cleanup and Cooperation	1	This violation was a single occurrence and actions were implemented to avoid recurrence of this violation.
<b>Total Base Liability for Violation #4</b>	\$7,700	The base liability is calculated as the initial liability multiplied by each of the above three factors.

The Enforcement Policy states that five other factors must be considered before obtaining the final liability amount.

**Table 5: Total Base Liability for all violations: \$153,460**

Other Factor Considerations		
Ability to pay and continue in business	No adjustment	DLC Rocklin is a limited liability corporation developing 77 single family residential units with additional holdings throughout the State. The Prosecution Team will allow DLC Rocklin to present the argument of hardship if so desired.

Other Factor Considerations		
Economic benefit	\$12,180	<p>The economic benefit is based on the avoided costs associated with properly stabilizing the Project with erosion control BMPs and allowing the stormwater runoff to discharge instead of impounding it onsite and dewatering. It also includes the avoided cost of sampling the stormwater discharges.</p> <p>The avoided cost of not implementing BAT/BCT measures to protect the Project was captured in the avoided cost of not implementing appropriate erosion control BMPs during rain events. The avoided cost for not protecting the Project site with erosion control BMPs during rain events was calculated to be approximately \$11,700. Bonded Fiber Matrix with seed was assumed to be an appropriate erosion control BMP of similar characteristics to the erosion control BMP applied to the inactive areas of the Project. A base cost of \$3,900 per acre (<a href="#">Footnote 1</a>) was assumed for a total of 2 acres with a one-time re-application event for repairs due to construction activities continuing through winter and for BMP failures.</p> <p>The avoided cost to prevent the discharges from violating the Basin Plan requirements was captured in the avoided cost for failure to sample. The avoided cost of not sampling during dewatering activities in accordance with the Construction General Permit requirements was calculated to be \$240 dollars per event, for a total of one event.</p> <p>The total economic benefit is estimated to be \$11,940 (\$11,700 + \$240 = \$11,940).</p>
Other factors as justice may require	No adjustment	<p>The costs of investigation and enforcement are “other factors as justice may require” and could be added to the liability amount. The Central Valley Water Board has incurred over \$5,000 in staff costs associated with the investigation and enforcement of the alleged violations. While this amount could be added to the penalty, it is not added at this time.</p>
Maximum liability	\$348,000	<p>Based on California Water Code section 13385: \$10,000 per day per violation and \$10 per gallon.</p>

Other Factor Considerations		
Minimum liability	\$13,134	Based on California Water Code section 13385, civil liability must be at least the economic benefit of non-compliance. Per the Enforcement Policy, the minimum liability is to be the economic benefit plus 10%. ( $\$11,940 \times 10\% = \$1,194$ ; $\$11,940 + \$1,194 = \$13,134$ )
<b>Final Liability</b>	<b>\$153,460</b>	The final liability amount is the total base liability plus any adjustment for the ability to pay, economic benefit, and other factors. The final liability must be more than the minimum liability and less than the maximum liability.

**Footnotes:**

1. Estimated costs from the November 2009 CASQA Storm Water Best Management Practice Handbook for Construction.